



## STATE OF NEW JERSEY

FINAL ADMINISTRATIVE  
ACTION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Daryl Lindsey

Reconsideration

CSC Docket No. 2018-1397

ISSUED: JULY 23, 2018 (EG)

The City of Newark, represented by Kenyatta K. Stewart, Esq., Corporation Counsel, petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on November 1, 2017, in which the Commission reversed Daryl Lindsey's 45 working day suspension, granted back pay, benefits, seniority and counsel fees.

By way of background, Lindsey was immediately suspended on November 6, 2010. He was issued a Preliminary Notice of Disciplinary Action (PNDA) on November 11, 2010 charging him with various violations of Newark Police Department rules and regulations as a result of his involvement in a vehicular pursuit occurring on November 6, 2010. Although a departmental hearing was held on November 22, 2010, and resulted in Lindsey's reinstatement on November 25, 2010, there is no record that a Final Notice of Disciplinary Action (FNDA) was issued to Lindsey sustaining the charges or his suspension without pay from November 6, 2010 to November 24, 2010. See *N.J.A.C. 4A:2-2.6(d)*. Subsequently, in a PNDA dated February 3, 2012, the appointing authority again charged Lindsey regarding his involvement in the vehicular pursuit by attaching a copy of the charges and specifications it included on the November 11, 2010 PNDA. In a FNDA dated June 19, 2012, the appointing authority sustained the charges against the appellant and imposed a 30 working day suspension beginning July 16, 2012 and ending August 24, 2012. Lindsey appealed the June 19, 2012 FNDA imposing the 30 working day suspension to the Commission, which referred the matter to the Office of Administrative Law (OAL) for a hearing.

While the matter was pending at the OAL, via correspondence dated March 13, 2015, Lindsey advised OAL that he had been immediately suspended between November 6 2010 and November 24, 2010 based on the same charges and specifications that resulted in his suspension from July 16, 2012 to August 24, 2012. Therefore, Lindsey requested that the penalty in his 30 working day suspension appeal be amended to include the additional 15 working day suspension he served in November 2010 for a total of a 45 working day suspension.

An initial decision was rendered by the Administrative Law Judge (ALJ) on October 16, 2017 recommending that the 45 working day suspension be dismissed with prejudice and found that the appellant was entitled to 45 days of back pay and seniority. The ALJ set forth in her initial decision that Lindsey was suspended without pay on November 11, 2010 through November 24, 2010, and again from July 16, 2012 through August 24, 2012. Further, the ALJ indicated that Lindsey's appeal had been transmitted to OAL on August 1, 2012, and scheduled for a hearing on May 8, 2013. The appointing authority requested an adjournment for that hearing date and for six subsequent hearing dates. On the October 25, 2016 hearing date, the appellant requested an adjournment which was granted and the ALJ advised the parties that the new hearing dates of February 16 and 17, 2017 were peremptory dates which would not be adjourned. The appointing authority requested an adjournment again due to a medical leave for the corporation counsel then assigned to the matter. The matter was rescheduled for October 2, 2017. By letter dated September 25, 2017, the appointing authority requested another adjournment indicating that it was not prepared to move forward on the trial date. This request was denied, and the parties were ordered to appear on October 2, 2017. The appellant appeared on the October 2, 2017 hearing date but the appointing authority did not appear. Therefore, the ALJ dismissed with prejudice the 45 working day suspension. Upon a *de novo* review of the matter, the Commission adopted the ALJ's recommendation.

Initially, the appointing authority states that it filed exceptions to the ALJ's initial decision on November 6, 2017, but the Commission decided the matter on November 1, 2017. In light of the fact that the Commission did not consider its exceptions, the appointing authority requests reconsideration.

In the instant matter, the appointing authority asserts that it does not seek to disturb the decision to award Lindsey back pay for the 30 working day suspension beginning on July 16, 2012, but it opposes the 15 days of back pay for the suspension beginning on November 11, 2010. It argues that Lindsey was properly immediately suspended following a police chase which resulted in a fatality. It contends that Lindsey never filed an appeal of the immediate suspension and that the only matter before the Commission was the 30 working day suspension. Further, the appointing authority requests that counsel fees be denied. It argues that it was ready to proceed on October 25, 2016 but it was denied to

present its case when the matter was adjourned at Lindsey's request. Finally, it adds that it did not receive the ALJ's denial of its adjournment request in September 2017 and that it would not purposefully fail to appear at a hearing.

In reply, Lindsey, represented by Anthony J. Fusco, Jr., Esq., argues that he did not receive a FNDA regarding the November 2010 suspension. When he appealed the 30 day suspension, he requested that the Commission and OAL consolidate both the 30 working day suspension and the 15 working day suspension. He asserts that the appointing authority did not object to this consolidation. Further, Lindsey requests enforcement of the Commission's order awarding him back pay.

### CONCLUSION

*N.J.A.C. 4A:2-1.6(b)* sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, the appointing authority submitted its exceptions to the ALJ's October 16, 2017 initial decision seven days past the 13-day timeframe permitted to file exceptions. Given the history of delays and other procedural irregularities attributable to the appointing authority evidenced in this case, the Commission finds no good reason to review the exceptions as they were not presented at the original proceeding. Therefore, the appointing authority's petition is dismissed solely on those grounds. However, even assuming they were timely filed, it would not have changed the outcome of the original proceeding.

In the instant matter, the appointing authority argues that the ALJ and the Commission erred in granting Lindsey back pay for the 15 working day suspension beginning on November 11, 2010, because Lindsey had failed to properly appeal this suspension. The Commission does not agree. The appointing authority has not provided any evidence that an FNDA for the 15 working day suspension was properly issued or argue that Lindsey did not serve those suspension days without pay. Further, the matters were consolidated at OAL at Lindsey's request without objection from the appointing authority. Moreover, while the appointing authority argues that counsel fees should be denied, it provides no persuasive argument as to why these fees should be denied. Counsel fees were properly granted as the suspensions were reversed and Lindsey prevailed in the matter. Therefore, based on the foregoing, the appointing authority's request for reconsideration is denied.

With regard, to Lindsey's request for back pay, the appointing authority is ordered to pay Lindsey his back pay within 30 days of issuance of this decision.

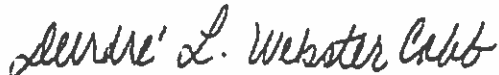
**ORDER**

Therefore, it is ordered that the appointing authority's request be denied. Further, the appointing authority is ordered to pay Daryl Lindsey's back pay award within 30 days of issuance of this decision.

In the event that the appointing authority has not made a good faith effort to comply with this decision within 30 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 31st day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 18TH DAY OF JULY, 2018



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Kenyatta K. Stewart, Esq., Corporation Counsel  
Anthony J. Fusco, Jr., Esq.  
Daryl Lindsey  
Kelly Glenn  
Records Center



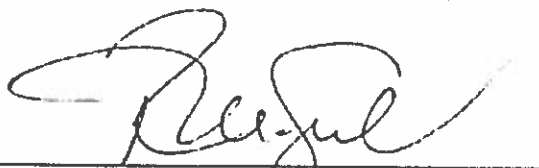
**ORDER**

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Daryl Lindsey. The Commission further orders that appellant be granted 45 days back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION  
THE 1<sup>ST</sup> DAY OF NOVEMBER, 2017



Robert M. Czedo, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

attachment

Christopher S. Myeres  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, Northern Jersey 08625-0312



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**DISMISSAL**

OAL DKT. NO. CSV 10680-12

AGENCY DKT. NO. 2013-96

**IN THE MATTER OF DARYL LINDSEY,  
CITY OF NEWARK, POLICE DEPARTMENT.**

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**Anthony J. Fusco, Jr., Esq., for appellant (Fusco & Macaluso, attorneys)**

**France Casseus, Assistant Corporation Counsel, for respondent (Kenyatta K.  
Stewart, Acting Corporation Counsel)**

Record Closed: October 2, 2017

Decided: October 16, 2017

**BEFORE LESLIE Z. CELENTANO, ALJ:**

Petitioner appealed his forty-five (45) working day suspension. Petitioner was suspended without pay on November 11, 2010, effective November 6, 2010, through November 24, 2010, and again from July 16, 2012 through until August 24, 2012. Following the first suspension, a suspension hearing was held on November 22, 2010 and petitioner was reinstated effective November 25, 2010. No Final Notice of Disciplinary Action (FNDA) was provided to or served upon petitioner for this fifteen (15) working day suspension. He was then suspended again without pay effective July 16, 2012 through August 24, 2012, pursuant to FNDA dated June 9, 2012.

The matter was transmitted to the Office of Administrative Law on August 1, 2012 and scheduled for hearing on May 8, 2013. That date was adjourned at the request of the City and rescheduled for January 13, 2014.

The January 2014 hearing was adjourned, again at the request of the City which indicated that the attorney of record would be out of the office for eight weeks. Accordingly, the matter was rescheduled for July 21, 2014.

The July 21, 2014, date was adjourned, again at the request of the City which indicated that its chief witness and investigator, Sergeant Hill, would be on vacation until August 2014. The matter was rescheduled for hearing on March 6, 2015.

The March 6, 2015, hearing was then adjourned as none of the witnesses were available, according to a telephone conference held on that date. The matter was rescheduled for August 3, 2015. The August 2015 date was adjourned, again at the request of the City, as the assistant corporation counsel then assigned to the matter was attending to family matters.

The hearing was rescheduled for April 18, 2016, however that date was adjourned, again at the request of the City which indicated it "inadvertently did not calendar the matter for a hearing" and did not subpoena its witnesses to appear.

The matter was then rescheduled for October 25, 2016, on which date the parties appeared at long last for hearing. The City appeared with its witnesses, and petitioner's counsel also appeared but indicated that the subpoenaed witnesses had not appeared, and asked for an adjournment. The City represented that there had been extensive communications with counsel and no mention of communication issues with witnesses, and as such, the City objected to the adjournment. The adjournment was granted when petitioner's counsel indicated enforcement of the subpoenas would be sought, and also because until that time there had been no adjournment requests from petitioner. The parties were advised that the new dates assigned, February 16 and 17, 2017, were peremptory dates which would not be adjourned.

On January 17, 2017, correspondence was received from the City requesting an adjournment of the peremptory February dates, as the assistant corporation counsel then assigned to the matter, Mr. Saunders, indicated that he would be on a medical leave of absence from January 23, 2017 until March 3, 2017. The February dates were therefore adjourned, and the matter rescheduled for October 2, 2017, nearly eight months later.

By letter dated September 25, 2017 and faxed to the undersigned on September 26, 2017, the City yet again requested an adjournment, four (4) days before the scheduled October 2 date, indicating it "is not prepared to move forward on said trial date." The matter has now lingered for over five years and been adjourned nine times, and accordingly, the adjournment request was **DENIED** and all parties were ordered to appear on October 2, 2017, for hearing. On that date, petitioner appeared at 9:00 am ready to proceed. No one appeared on behalf of respondent, and there was no communication of any kind whatsoever explaining the failure to appear for hearing related to suspensions from seven (7) years ago.

Based upon all of the foregoing, I **FIND** that this matter should be and is hereby **DISMISSED WITH PREJUDICE**. Appellant is entitled to back pay from November 6, 2010 through November 24, 2010, and from July 16, 2012 through August 24, 2012; and to seniority to the actual date of reinstatement, August 25, 2012.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

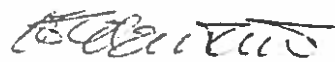
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION**,

44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 16, 2017

DATE



LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

10-16-17

Date Mailed to Parties:  
dr

OCT 17 2017



DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE